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**BINDING ADVICE**

Under Articles 7:900 *et seq.* Of the Dutch Civil Code  
In accordance with Article 4.3.5 of the Settlement Agreement

in the dispute between

Mr [REDACTED]

hereafter referred to as the “**Claimant**”

and

**Computershare Investor Services PLC**  
Fortis Settlement Claims Administrator

hereafter referred to as “**Computershare**”

hereafter together referred to as the “**Parties**”

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**The Dispute Committee :**

Ms Alexandra SCHLUEP  
Mr Dirk SMETS  
Mr Harman KORTE

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**26 JUNE 2023**

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## I. INTRODUCTION

### A. The Parties

1. The Claimant in this dispute is Mr [REDACTED], having his domicile at [REDACTED], Belgium ("**Claimant**").<sup>1</sup> He was represented by his counsel, Me Laurent Arnauts, attorney (*avocat*) in Belgium, during the exchanges with Computershare and has been represented by him in the present proceedings.<sup>2</sup>
2. Computershare Investor Services PLC is a company incorporated under the laws of the United Kingdom, acting as Fortis Settlement Claims Administrator and, in that capacity, having its registered office at PO Box 82 The Pavilions, Bridgwater Road, Bristol BS99 7NH, United Kingdom (**Computershare**).<sup>3</sup>

### B. Composition of the Dispute Committee

3. The Dispute Committee is composed of five members.<sup>4</sup> Article 3.1 of its Regulations<sup>5</sup> prescribes: "*Each matter coming before the Dispute Committee shall be decided by a panel of three members*".
4. For the purpose of this particular dispute, the three members composing the panel are: Ms Alexandra Schlupe (Chair), Mr Harman Korte and Mr Dirk Smets.

### C. Historical context and procedural background of the dispute

#### C.1 *The Events*

5. Between 2007 and 2008, Fortis N.V. (after 30 April 2010, Ageas N.V.), a company incorporated under the laws of The Netherlands and Fortis S.A./N.V. (after 30 April 2010, Ageas S.A./N.V.), a company incorporated under the laws of Belgium (the **Fortis Group** or **Ageas**) engaged in certain activities which, following certain allegations, would have violated Belgian and Dutch laws and regulations (the **Events**).
6. As a result of these allegations, a number of civil claims and legal proceedings were initiated both in The Netherlands and in Belgium, among others, by the Dutch Investors' Association

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<sup>1</sup> Mr [REDACTED] is the Claimant in these proceedings, but the submissions sometimes refer to the "Family [REDACTED]" as being the Claimant.

<sup>2</sup> A power of attorney dated 2 December 2018 is on the record.

<sup>3</sup> Computershare has been appointed, pursuant to Clause 4.2 of the Settlement Agreement, as an independent claims administrator to handle the claims process.

<sup>4</sup> The Dispute Committee is composed of the following members : Ms Henriëtte Bast (as of 30 April 2021), Mr Harman Korte (as from the start), Mr Marc Loth (until 18 November 2020), Ms Alexandra Schlupe (as from 30 April 2021), Mr Dirk Smets (as from the start), and Mr Jean-François Tossens (as from the start).

<sup>5</sup> The Regulations of the Dispute Committee can be consulted on the website of FORsettlement: [www.for-settlement.com](http://www.for-settlement.com).

(VEB)<sup>6</sup>, SICAF<sup>7</sup> and FortisEffect<sup>8</sup> (all in The Netherlands), and by Deminor<sup>9</sup> and a group of investors advised and coordinated by Deminor (in Belgium).

### C.2 The Mediation Process

7. On 8 October 2015, a mediation process, based on a mediation agreement, was initiated between the aforementioned plaintiffs, Ageas and Stichting FORsettlement (**FORsettlement**).<sup>10</sup>
8. It stemmed out of that mediation process that, without admitting that it would have been or is engaged in any wrongdoing, that any laws, rules or regulations would have been violated or that any person who held any shares in the Fortis Group in 2007 or 2008 would have suffered any compensable damage, Ageas was willing to settle all claims which any person who held any share in the Fortis Group at any time between 28 February 2007 c.o.b.<sup>11</sup> and 14 October 2008 c.o.b. (the **Eligible Shareholders**) has had, now has or may have in the future against Ageas, its directors and any other parties in connection with the Events.

### C.3 The Settlement Agreement and the Eligible Shareholders<sup>12</sup>

9. The above agreement has been embedded in a formal settlement on 13 April 2018 between Ageas SA/NV, Vereniging van Effectenbezitters, DRS Belgium CVBA, Stichting Investor Claims Against FORTIS, Stichting FortisEffect and Stichting FORsettlement (the **Settlement Agreement**).<sup>13</sup> Pursuant to the Settlement Agreement, each Eligible Shareholder is entitled to a certain compensation (portion of the Settlement Amount), the allocation of which is to be supervised by the Claims Administrator and the Dispute Committee.
10. The Settlement Agreement was declared generally binding by the Amsterdam Court of Appeal on 13 July 2018. As of that moment, the Settlement Agreement has pursuant to Article 7:908 (1) of the Dutch Civil Code (**DCC**) between the parties referred to in the previous paragraph of this binding advice on the one hand and the Eligible Shareholders on the other the effect of a settlement agreement to which each of the Eligible Shareholders shall be a party, with the exception of the Excluded Persons as well as the Eligible Shareholders who have issued an Opt-Out Notice within the specified period.

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<sup>6</sup> *Vereniging van Effectenbezitters*, an association incorporated under the laws of The Netherlands, having its registered office in The Hague, The Netherlands and registered under number 40408053 (**VEB**).

<sup>7</sup> *Stichting Investor Claims Against FORTIS*, a foundation incorporated under the laws of The Netherlands, having its registered office in Amsterdam, The Netherlands and registered under number 50975625 (**SICAF**).

<sup>8</sup> *Stichting FortisEffect*, a foundation incorporated under the laws of The Netherlands, having its registered office in Utrecht, The Netherlands and registered under number 30249138 (**FortisEffect**).

<sup>9</sup> *DRS Belgium CVBA*, a cooperative company with limited liability, incorporated under the laws of Belgium, having its registered office in Brussels, Belgium and registered with the Crossroads Bank for Enterprises under number 0452.511.928 (**Deminor**).

<sup>10</sup> A foundation incorporated under the laws of The Netherlands, having its registered seat in Amsterdam, The Netherlands and having as registration number 65740599.

<sup>11</sup> According to Schedule 1 to the Settlement Agreement, c.o.b. means the moment trading closed on the stock exchanges of Amsterdam or Brussels as relevant on the relevant date.

<sup>12</sup> The Settlement Agreement can be consulted on FORsettlement's website at: [www.forsettlement.com](http://www.forsettlement.com).

<sup>13</sup> Unless otherwise specified in this Binding Advice, the capitalized terms shall have the same meaning as those terms defined in the Settlement Agreement.

11. Pursuant to the Settlement Agreement, each Eligible Shareholder is entitled to a certain compensation (a portion of the Settlement Amount) to be determined in accordance with the Settlement Agreement and the Settlement Distribution Plan, the allocation of which is overseen by FORsettlement pursuant to Article 4.2.1 of the Settlement Agreement.
12. FORsettlement has appointed Computershare as Claims Administrator. Its task is to determine in first instance the validity of each claim submitted in a Claim Form and the amount due to an Eligible Shareholder. In doing so, Computershare acts as an independent assessor in accordance with Article 7:907(3)(d) DCC.

#### C.4 *The Dispute Committee*

13. Article 4.3.5 of the Settlement Agreement provides that if an Eligible Shareholder disagrees with a determination made by Computershare, this Eligible Shareholders may submit the dispute to the Dispute Committee *“for final and binding resolution by way of a binding advice (bindend advies) under Dutch Law”*.
14. By signing and submitting the Claim Form, the Claimant has (re)agreed to the exclusive jurisdiction of the Dispute Committee in relation to the matters set forth in articles 4.3.4 through 4.3.8 of the Settlement Agreement, including disputes between the Claimant and the Claims Administrator as to the entitlement to indemnification (including to the extent relevant as an Active Claimant), as well as the validity and/or the amount of the claim for indemnification as stated in the Claim Form, to be issued by the Dispute Committee by way of binding advice in accordance with the Regulations of the Dispute Committee (the **Regulations**).<sup>14</sup> The Regulations are accessible online.<sup>15</sup>
15. The binding advice which the Dispute Committee shall issue in accordance with the above is a specific form of dispute resolution provided by Article 7:900 et seq. DCC, by which the parties to a dispute entrust a third party to settle the legal relationship between them. In accordance with Article 4.17 of the Regulations, the Dispute Committee shall decide in accordance with Dutch law, with the provisions of the Settlement Agreement and the Regulations and, if relevant, in accordance with other rules or applicable trade usages which the Dispute Committee considers appropriate in view of the nature of the dispute.

## II. HISTORY OF THE PROCEEDINGS BEFORE THE DISPUTE COMMITTEE

16. On 11 October 2022 Me Laurent Arnauts submitted on behalf of the Claimant a Request for Binding Advice to the Dispute Committee against a Notice of Rejection issued by Computershare on 6 September 2022, in the case with claim numbers 627757-8 and 627719-5 in the

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<sup>14</sup> Claim Form here means not only the form that is filled in manually and sent by postal mail to Computershare, but also the form that is filled in and submitted via Computershare's web application.

<sup>15</sup> The Regulations of the Dispute Committee can be consulted on the website of FORsettlement: [www.forsettlement.com](http://www.forsettlement.com).

name of [REDACTED]. On the same day, the Dispute Committee confirmed the receipt of the Request by email to Me Arnauts.

17. On 12 October 2022 the Dispute Committee sent the Request to Computershare for comments inviting Computershare to submit its response by 11 November 2022 at the latest.
18. As Me Arnauts had filed several Requests for Binding Advice in a number of so-called bulk cases as well as in a number of individual cases, such as the present case, the Dispute Committee informed the Parties and FORsettlement on 3 November 2022 of its decision to hold a Case Management Conference by videoconference to discuss the procedure to be followed in all these cases. The Dispute Committee invited the Parties and FORsettlement, to confirm their availabilities on the suggested dates of 15 or 22 November 2022 respectively at 5pm and 4pm CET, by 11 November 2022 the latest.
19. On 3 November 2022, both Computershare and the Claimant responded that they were available on 22 November 2022 at 4 pm for a Case Management Conference.
20. On 3 November 2022, Mr Yves Herinckx, Chairman of the Board of FORsettlement, and Ms Margriet de Boer, Counsel to FORsettlement responded that they were available at 4pm CET on 22 November 2022.
21. On 12 November 2022 Computershare sent by email to the Dispute Committee a letter containing the Claims Administrator's response to the Claimant's Request for Binding Advice.<sup>16</sup>
22. On 22 November 2022, the Case Management Conference was held by videoconference in the presence of:
  - For the Claimant: his counsel Me Laurent Arnauts;
  - For Computershare: Ms Janainna Pietrantonio, Ms Leonie Parkin, Mr Keith Datz, and Mr Bryan D'Imperio;
  - For FORsettlement: Mr Yves Herinckx;
  - For the Dispute Committee: Ms Alexandra Schluep (Chair), Mr Dirk Smets and Mr Harman Korte, assisted by Ms Anne-Marie Devrieze and Mr Simon Vanlaethem.
23. On 5 December 2022 the Claimant sent his reply to Computershare's letter dated 11 November 2022 to the Dispute Committee.<sup>17</sup>
24. On 13 December 2022 Computershare submitted to the Dispute Committee its rejoinder to the Claimant's submission dated 6 December 2022 and requested the Dispute Committee to proceed in this matter without a hearing on the merits.

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<sup>16</sup> The letter containing Computershare's response was dated 11 November 2022.

<sup>17</sup> There is also an email with the same content dated 6 December 2022 in the record.

25. On 6 January 2023 Computershare sent a follow-up email to the Dispute Committee and the Claimant seeking a confirmation from the Claimant that he agrees to proceed towards the issuance of a binding advice without a hearing on the merits.
26. On 13 January 2023 Me Arnauts sent an email to the Dispute Committee with copy to Computershare requesting the Dispute Committee to grant him an extension of deadline until 19 January 2022 to revert on the issue of a hearing on the merits.
27. By email dated 16 January 2023 the Dispute Committee granted the requested extension to Me Arnauts.
28. By email dated 18 January 2023 Me Arnauts indicated that the Claimant wished a hearing on the merits to be scheduled following his next submission responding to Computershare's rejoinder dated 13 December 2022.
29. On 21 January 2023, the Dispute Committee invited the Parties to a hearing on the merits to be held on 7 February or 8 February 2023 at 4pm CET. The Parties were requested to confirm their availabilities on the proposed dates by 30 January 2023.
30. On 23 January 2023, both Computershare and Me Arnauts confirmed by email their availability for 8 February 2023.
31. On 30 January 2023, the Claimant sent his reaction to the Claims Administrator's rejoinder dated 13 December 2022.
32. On 8 February 2023, the hearing on the merits was held by videoconference in the presence of:
  - For the Claimant: his counsel Me Laurent Arnauts;
  - For Computershare: Ms Janainna Pietrantonio, Ms Leonie Parkin, Mr Keith Datz, and Mr Bryan D'Imperio; and,
  - For the Dispute Committee: Ms Alexandra Schluep (Chair), Mr Harman Korte and Mr Dirk Smets, assisted by Ms Anne-Marie Devrieze and Ms Elodie Fortin.
33. On 8 February 2023 the Dispute Committee sent an email to both Parties confirming the agreements made during the hearing regarding further submissions from the Parties. More specifically, the Dispute Committee requested the Claimant to elaborate on his force majeure and reasonableness and fairness arguments by reference to the Settlement Agreement and the case law of the Dispute Committee.
34. On 17 February 2023 Me Arnauts requested by email to the Dispute Committee an extension of deadline for his submission until 21 February 2023. The Dispute Committee granted the requested extension by email on the same day.
35. On 21 February 2023 Me Arnauts sent by email his submission to the Dispute Committee and Computershare.

36. On 28 February 2023, Computershare sent its response by email requesting the Dispute Committee to disregard Me Arnauts' latest submission.
37. On 1 March 2023 Me Arnauts sent an email to the Dispute Committee reacting to Computershare's response of 28 February 2023.
38. By email dated 9 May 2023 the Dispute Committee informed the Parties that it assumed that the Parties had no objection against including in the record of the present matter an Excel file that Computershare had forwarded to the Dispute Committee at the latter's request in the context of another matter handled by Me Arnauts. The Parties were invited to provide the Dispute Committee with any additional comments by 16 May 2023 at the very latest.
39. Later the same day, Computershare confirmed by email to the Dispute Committee that it had no objection for the file being included in the record.
40. On 15 May 2023 Me Arnauts responded that he also had no objection for the file being included in the record.
41. On 17 May 2023 the Dispute Committee acknowledged receipt of the Parties' respective reactions. The Dispute Committee closed the proceedings and indicated that it expected to render its Binding Advice shortly.

### III. SUMMARY OF THE DISPUTE

42. The present Dispute concerns the question whether the Claimant can obtain compensation for the 292.366 Fortis shares he inherited from his father Mr [REDACTED], who passed away on [REDACTED] 2019, considering that neither the deceased nor the Claimant submitted a Claim Form and/or evidence for these shares before the Claim Submission Deadline of Article 4.3.7 of the Settlement Agreement.

### IV. POSITION OF THE PARTIES

#### A. The relevant events and correspondence exchanged between the Parties prior to the procedure before the Dispute Committee

43. On 26 December 2018 Me Arnauts filed a bulk submission with Computershare, which – among hundreds of other claims filed for multiple Eligible Shareholders– included the Claimant's own claim, in the name of [REDACTED]. The bulk filing included an Excel file listing the shares held by each claimant as well as the documentation supporting each claim submitted in individualized PDF files for each claimant.<sup>18</sup> The PDF file related to Mr [REDACTED]' claim was numbered 95 and contained the following documents: a power of attorney

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<sup>18</sup> The Dispute Committee did not receive a copy of the bulk submission. The description of the bulk filing is based on the concurring statements made by the Parties.



called “Procuration FORTIS Settlement”, a copy of the Claimant’s national ID, a certificate for 2.592 Fortis shares held by the Claimant issued by Ageas SA/NV, a certificate of 67.940 Fortis shares held by the Claimant issued by BNP Paribas, several bank statements and a transaction overview supporting the claim.

44. Computershare on its own initiative attributed to the Claimant’s claim two separate claim numbers: Claim 627719-5 for the 2,592 Fortis shares held with Ageas SA/NV and Claim 627757-8 for the 67.940 Fortis shares with BNP Paribas.
45. On [REDACTED] 2019, the Claimant’s father Mr [REDACTED] passed away. According to the Certificate of Inheritance (*Attestation d’hérédité*) dated [REDACTED] 2019 his heirs are his wife Ms [REDACTED] and his only son, Mr [REDACTED].
46. On 24 May 2019 Computershare sent an “*Acceptance of claim and distribution*” letter and Excel file to Me Arnauts, which included among many other claims, the Claimant’s claim numbered 627719-5 for the 2,592 Fortis shares held with Ageas SA/NV.<sup>19</sup> The Excel file included for claim numbered 627719-5 the accepted Fortis shareholdings as well as the compensation for Buyer Shares, Holder Shares, Compensation Add-On, Cost Addition buckets and the Provisional Claim Amounts. In the accompanying email Computershare indicated that Me Arnauts had the opportunity to send a Notice of Disagreement in writing within 20 days against Computershare’s “*Acceptance of claim and distribution*” letter and Excel file.<sup>20</sup> The Excel spreadsheet did not include Claim 627757-8.
47. Provisional payments were made in May 2019 for Claim 627719-5.
48. On 13 June 2019 Me Arnauts asked Computershare by email whether it had implemented the case law of the Dispute Committee as laid down in the Binding Advice rendered on 31 May 2019 in the joint disputes 2019/0001 & 2019/0002 with respect to the joint accounts in the bulk filing.<sup>21</sup> If this would not be the case, Me Arnauts asked whether Computershare would accept a bulk “blanket” Notice of Disagreement for all joint account holder claimants in order to avoid unnecessary paperwork.
49. On the same 13 June 2019 Computershare replied to Me Arnauts that the Claims Administrator could not answer in a short enough timeframe and that since this was the last day of the deadline, it would be prudent for Me Arnauts to file a Notice of Disagreement. Computershare also indicated that it would accept a bulk “blanket” Notice of Disagreement for all joint account holder claimants to save on unnecessary paperwork.
50. Later on 13 June 2019 Me Arnauts filed a bulk Notice of Disagreement relating to the Compensation Add-On for more than 700 claims from many different shareholders, including the Claim

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<sup>19</sup> See row 228 of this Excel spreadsheet.

<sup>20</sup> This “*Acceptance of claim and distribution*” letter and Excel file must be deemed to be a Determination of Acceptance by Computershare for the claims mentioned therein.

<sup>21</sup> In this decision, the Dispute Committee held – in short – that the Compensation Add-On should be calculated on a person-by-person basis for each Eligible Shareholder also in the case of joint accounts.

627719-5 in the name of [REDACTED].<sup>22</sup> The bulk Notice of Disagreement did not include the Claim 627757-8 since no “*Acceptance of claim and distribution*” letter had been sent for that Claim yet.

51. On the same day, after Computershare had confirmed the timely filing of the Notice of Disagreement, Me Arnauts asked whether the Claims Administrator required him “to file additional (duplicate) Notices of disagreement for the claims with additional motives” or whether he could consider that all claims are fully open to review in that respect and that he would be allowed to provide Computershare with the additional motives later.
52. Later on 13 June 2019 Computershare wrote to Me Arnauts that if he wanted to raise disagreements based on motives other than the EUR 950 Compensation Add-On for the joint account holders, then he had to submit those motives on that day, as this was the last day of the 20-days deadline.
53. On 2 July 2019 Computershare sent an email to Me Arnauts with an Excel file containing Computershare’s responses to all disputed claims.<sup>23</sup> As can be seen in this Excel file, Computershare did not revise its position as to the Provisional Claim Amount for Claimant’s Claim 627719-5. In its email, Computershare asked Me Arnauts to let the Claims Administrator know if it had missed any claims.
54. On 28 July 2019, the deadline for submitting Claim Forms to Computershare expired.
55. On 18 November 2019 Computershare sent another “*Acceptance of claim and distribution*” letter with an accompanying Excel file to Me Arnauts. This Excel-sheet included Claim 627757-8.
56. Initial payments were made in November 2019 for the Claim 627757-8.
57. On 7 May 2020 Me Arnauts’ assistant informed Computershare by email that they had a case of force majeure with regard to two claimants, namely Mr [REDACTED] and Mr [REDACTED]. The email briefly explained that Mr [REDACTED] deceased on [REDACTED] 2019 at a very old age and that his only son Mr [REDACTED] had inherited his Fortis shares. Mr [REDACTED] had not included the inherited shares in his own claim, mistakenly assuming that his father had done so himself, either through Me Arnauts or Deminor. In his email, Me Arnaut’s assistant requested Computershare to complement Mr [REDACTED] with the inherited shares. The email itself did not specify the number of shares but included as an attachment a Certificate of Inheritance (*Attestation d’hérédité*) dated [REDACTED] 2019 and two bank certificates issued by BNP Paribas in 2010 and

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<sup>22</sup> The Parties’ submissions suggested that Claim 627757-8 was also included in the bulk Notice of Disagreement for Mr [REDACTED], but this claim could not be identified by the Dispute Committee.

<sup>23</sup> This Excel file was not submitted to the Dispute Committee in the context of the present matter, but in the context of another matter handled by Me Arnauts. The Parties had no objection to include this Excel file in the record of the present matter.

2015 and addressed to Mr [REDACTED], indicating that the latter held 245,000 Fortis shares on 1 January 2007 and 292.366 Fortis shares from 15 October 2007 onwards.

58. On 13 May 2020 Computershare responded that it would generally not accept this request since the deadline to submit claims had passed, but that it would escalate the request to FOR-settlement for their consideration.
59. On 14 May 2020 Computershare informed Me Arnauts that it had escalated the request and that it could not include the additional shares from Mr [REDACTED] in Mr [REDACTED] [REDACTED]' claim since the Claim Submission Deadline of 28 July 2019 had been missed, which means that "these shares are not eligible any longer for participation in the settlement".
60. On 13 October 2020 Computershare sent yet another Excel file to Me Arnauts announcing supplemental payments to be made. This file contained both Claimant's Claim numbers.<sup>24</sup>
61. Supplemental payments were made in October 2020 for both Claims 627719-5 and 627757-8.
62. On 24 June 2022 Computershare sent an email to Me Arnauts regarding the Fortis Settlement Final Claim Amount letters and data. The Final Claim Amount letters relating to the claimants represented by Me Arnauts would all be uploaded to a SFTP site, from which the letters could be downloaded. The email as well as the Final Claim Amount letter highlighted that if a claimant believed his or her claims' determination to be incorrect, this claimant could request a review of the determination within 30 calendar days, i.e. until 24 July 2022.
63. On 28 June 2022, Computershare sent an email to Me Arnauts indicating that the Final Claim Amount letters were now located on a new SFTP site and providing new login information.
64. By email dated 15 July 2022 Me Arnauts requested Computershare to extend the deadline to file a Notice of Disagreement beyond 24 July 2022. Me Arnauts also mentioned that the "blanket" Notices of Disagreement submitted on 13 June 2019 were still unresolved.
65. On 21 July 2022 Computershare responded to Me Arnauts that the deadline could not be extended and that all previous disagreements raised during the course of the administration of the claims had been reviewed, discussed and resolved.
66. On 23 July 2022 Me Arnauts asked Computershare to provide explanations with regard to the Compensation Add-On capped at EUR 950 per claimant.
67. On 24 July 2022 Mr Arnauts filed by email a Notice of Disagreement for Claims 627719-5 and 627757-8 on behalf of Mr [REDACTED]. In this email, the Claimant mentioned that he was the sole heir of his deceased father Mr [REDACTED] and had inherited his 292.366 Fortis shares. The Claimant had not complemented his own claim with the inherited Fortis shares because he thought that his father had already filed a claim. The Claimant stated

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<sup>24</sup> On rows 146 and 159 respectively.

that the Final Compensation amount calculation should take into account the 292.366 additional shares. As attachments to the Notice of Disagreement, the Claimant submitted a Certificate of Inheritance (*Attestation d'hérédité*) dated [REDACTED] 2019, two certificates issued by BNP Paribas on respectively 10 February 2010 and 19 May 2015 relating to the 292.366 Fortis actions held by the Claimant's father and a medical certificate dated 4 September 2020 issued by Mr [REDACTED]' doctor.

68. On 6 September 2022 Computershare sent a Notice of Rejection to the Claimant on the basis that the object of the disagreement must exclusively relate to the determination of the Final Claim Amount pursuant to Paragraph 5 of Schedule 2 to the Settlement Agreement.
69. On 11 October 2022 the Claimant submitted his Request for Binding Advice to the Dispute Committee.

**B. Position of the Claimant**

70. The Claimant states that his father Mr [REDACTED] passed away on [REDACTED] 2019, [REDACTED] months before the claims filing deadline of 28 July 2019. According to the Claimant, his father has not been able to timely file a claim with the Claims Administrator for his 292.366 Fortis shares due to the decline of his mental capacity in the year before his passing away. In support of this statement, the Claimant submitted a short certificate provided by Mr [REDACTED]' medical doctor on 4 September 2020, stating that in the year preceding his demise, Mr [REDACTED] [REDACTED] suffered from severe cognitive and memory troubles, which manifestly impaired his capacity to manage his affairs. The Claimant adds that he was not aware of his father's declining condition and was not informed thereof by his father's medical doctor since the latter was bound by professional privilege. As a result, no administrator of his father's estate was appointed. At the hearing, Me Arnauts added that for reasons of human dignity also, no guardian or administrator had been appointed to manage Mr [REDACTED]' affairs.
71. In his submission dated 6 December 2022, the Claimant states that he inherited the property of this father but that *"he did not complement his own claim with the one inherited from this father, thinking that his father had himself. He became aware of the situation only the next year, in 2020"*. In a later submission dated 30 January 2023, the Claimant explained that after the passing away of his father, he had *"not been able to audit his deceased father [REDACTED]'s estate so quickly and so thoroughly as to find out (i) that he held Fortis shares 10 years before and (ii) that he did not file a claim with Computershare 10 years after"*.
72. In his written and oral submissions, the Claimant states that this is a case of force majeure in the sense of Article 6:75 of the DCC, pursuant to which a breach cannot be attributed if the contracting party is not to blame for the breach according to law, legal act or generally accepted principles. The Claimant argues that his father's mental illness and death made it impossible (both for his father and himself) to file a claim before the Claims Submission Deadline. The Claimant takes the position that since force majeure was not restricted nor excluded in the Settlement Agreement, Article 6:75 DCC is fully applicable to the present matter. The

Claimant also points to the existence of this principle in the Dutch Civil Procedure regulations,<sup>25</sup> EU law<sup>26</sup> and EU caselaw.<sup>27</sup> The Claimant asserts that it would be a violation of the right to a fair trial under Article 6 of the European Convention on Human Rights to conclude that the force majeure exception cannot be considered as implicitly part of the Settlement Agreement.

73. The Claimant also notes that the Dispute Committee has accepted the principle of force majeure in various cases (2021/0039, 2021/0107, 2020/0067) and even admitted that a medical situation could constitute a case of force majeure, provided that it extended to the whole claim filing period (2021/0074) as is the case in the present matter.
74. Furthermore, the Claimant asserts that the main purpose of the Settlement Agreement is to ensure that shareholders receive just compensation for their losses. The Claimant argues that Dutch law and EU law are both applicable to the resolution of the current dispute and notably relies on Article 17 of the Dutch Constitution and Article 6 of the European Convention on Human Rights to conclude that effective access to justice is required in the current binding advice proceedings before the Dispute Committee, which are akin to judicial proceedings. The Claimant adds that even if the Settlement Agreement was approved and declared binding by the Amsterdam Court of Appeal on 13 July 2018, expiry periods contained therein can conflict with the fundamental right of access to justice.
75. According to the Claimant, principles of reasonableness and fairness should be kept into consideration by the Dispute Committee to ensure effective access to justice. As elements to be taken into account in the context of reasonableness and fairness, the Claimant points out that it is common knowledge that the Claims Administrator has overcompensated a significant number of claims in a first stage and has renounced to claw back the excess amounts distributed provisionally. In addition, Ageas has committed to bear any residual risk on top of the EU 1.3 billion budget provided in the Settlement Agreement.
76. The Claimant also requests Computershare to disclose any provisions of its contract with Ageas and/or FORsettlement which could entail a liability with the regard to the claims administration services provided.
77. The Claimant further states that the Determination of the Provisional Claim Amount could not be considered final even if a Final Determination letter was sent to the Claimant on 24 June 2022 since Computershare had not provided a Notice of Rejection following the Claimant's Notice of Disagreement to the Determination of the Provisional Claimant Amount submitted on 13 June 2019. Furthermore, the Claimant argues that in his bulk Notice of Disagreement sent on 13 June 2019, he reserved the right to include additional motives during the review

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<sup>25</sup> The Claimant refers in his submissions to Article 1.2 litt. p) of the Dutch Civil Procedure regulations ("*Landelijk procesreglement civiele zaken rechtbanken en gerechtshoven*") which provides a definition of force majeure (in Dutch: *overmacht*).

<sup>26</sup> The Claimant refers to Article 18, 1 b), sub 3. Regulation (EC) No 861/2007 of the European Parliament and of the Council of 11 July 2007 establishing a European Small Claims Procedure.

<sup>27</sup> The Claimant cites the European Court of Justice case *Käserei Champignon Hofmeister GmbH & Co.* (C-210/00, ECLI:EU:C:2002:440, cons. 79).

process. In view of the fact that it was materially impossible for a bulk filer to verify all the hundreds of Provisional Claim Amounts for additional motives within the deadline, prohibiting a claimant to add motives of disagreement at a later stage would be disproportionate and constitute an abuse of rights and a violation of the rights of defence.

78. In conclusion, the Claimant believes that he is entitled to receive compensation for the additional 292.366 Fortis shares since evidence of his father's ownership of these shares and his inheritance rights were proven and not contested by the Claims Administrator. Since the purpose of the Settlement Agreement was to settle all claims for any person who had held Fortis shares during the assigned period and the Dispute Committee never excluded the principle of force majeure outright in its previous Binding Advices, it would be unreasonable and unfair to prevent the Claimant from receiving such compensation considering the given circumstances.

C. Position of Computershare

79. Computershare states in its submissions that Mr ██████████ did not file a Claim Form for his 292.366 Fortis shares before the expiration of the Claim Submission Deadline of 28 July 2019 and neither did his son Mr ██████████ nor Me Arnauts. The Settlement Agreement does not provide for additional shareholdings to be filed after the expiry of the deadline for filing claims as outlined in Article 4.3.7. To consider otherwise would amount to extending the deadline for filing claims beyond the date provided for in the Settlement Agreement and would contravene Article 4.3.7 of the Settlement Agreement, which was approved by the Amsterdam Court of Appeal.
80. Computershare takes the position that the Claimant cannot rely on the argument of force majeure in support of his claim, because there existed sufficient and ample opportunity throughout the Settlement process to file a claim or at the very least to seek information on any filings made in the name of Mr ██████████.
81. Computershare takes the view that Mr ██████████ reduced mental function in the year leading up to his death in ██████████ 2019 would have warranted the appointment of a person to deal with the medical and financial decisions related to Mr ██████████ already before the opening of the claim submission period. This person could have filed a claim form on his behalf already in 2018. Alternatively, Mr ██████████ could have turned to Active Claimants Groups or other institutional filers which were already active from 2014 onwards.
82. Computershare further states that a timely claim could still have been filed by the heirs or a representative of the estate after Mr ██████████' death. Since the Claim Submission Deadline expired on 28 July 2019, the family had ██████████ months to enquire with the Claims Administrator whether a claim had been filed by Mr ██████████ and, if this was not the case, to submit a Claim Form. As this was not the case, the additional shares cannot be considered for compensation.

83. Computershare refers to the Binding Advice rendered by the Dispute Committee in the matter 2020/0067, in which the Dispute Committee addressed force majeure. Computershare highlights that according to this Binding Advice, the claimant's responsibility to meet a deadline pertaining to his or her claim is not granted an exception for scenarios in which the reasons for which the deadline was not met are not attributable to the Claims Administrator. Computershare states that it cannot be held responsible for the claim for compensation for the 292.366 shares not being submitted on time, since both the potential claim and the evidence of Mr [REDACTED]' health issues and death were only brought to its attention in May 2020.
84. Computershare also states that the bulk Notice of Disagreement for more than 700 claims filed by Me Arnauts on 13 June 2019 related exclusively to the Compensation Add-On for joint-accounts and did not mention other disagreements for Claim 627757-8<sup>28</sup> and 627719-5 in the name of [REDACTED]. In an email exchange held with Me Arnauts that same day, Computershare specified that any other motives of disagreement – besides the Compensation Add-On – had to be filed the same day, which was the last day of the deadline. Me Arnauts did not file additional motives on that day and was not permitted to reserve the right to add additional motives at a later stage. In the meantime, the issue of the Compensation Add-On has been resolved. Computershare maintains that the Claimant cannot re-open the earlier Determination of the Provisional Claim Amount as this Determination has become binding pursuant to Sections 4.4 and 4.9 of Regulations. The Notice of Disagreement submitted by the Claimant on 24 July 2022 can only relate to the Determination of the Final Claim Amount, in accordance with paragraph 5 of Schedule 2 of the Settlement Agreement.
85. Finally, Computershare notes that the calculations of the Final Claim Amounts for all claimants have been completed in June 2022 and that the final instalments have been paid out in August 2022. This means that the fixed overall Settlement Amount of EUR 1.308,5 million has been fully allocated and that there is no space for accepting additional claim amounts into the Settlement. The Claims Administrator, Ageas and FORsettlement rely on the finality of the claims adjudication in order to complete closure of the process.
86. Computershare concludes that the Request for Binding Advice should be dismissed as it does not meet the necessary grounds to move forward.

## V. DISCUSSION AND FINDINGS

### A. Admissibility of the Claimant's Request for Binding Advice

87. In order to be admissible, a Request for Binding Advice must be submitted to the Dispute Committee in accordance with Article 4.3.5 of the Settlement Agreement within 30 business days of Computershare's letter rejecting, in whole or in part, the Eligible Shareholder's objections to the rejection of its claim. The Dispute Committee has determined that Computershare sent a Notice of Rejection to the Claimant on 6 September 2022 and that the Request for Binding

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<sup>28</sup>

The Dispute Committee notes that this claim is not listed in the bulk Notice of Disagreement.

Advice was submitted to it on 11 October 2022, pursuant to which the Dispute Committee has considered the Request for Binding Advice as timely submitted.

B. On the merits

B.1 *The Claim Submission Deadline*

88. At the outset, the Dispute Committee emphasizes that in conducting its review of the requests for binding advice, it is bound by the provisions of the Settlement Agreement, which was reviewed and declared generally binding by the Amsterdam Court of Appeal in its decision of 13 July 2013.
89. The Settlement Agreement and the Settlement Distribution Plan, on which the Claimant bases its claim, have been briefly described in paragraphs 10 and 11 above. One of the essential aspects of the Settlement Agreement and the Settlement Distribution Plan is the existence of a fixed Settlement Amount of which each Eligible Shareholder can claim a portion. This means that the Settlement Agreement can – only – be fully implemented when all the claims of Eligible Shareholders have been determined. The implementation of the Settlement Agreement requires that all claimants need to submit their claim with respect to a portion of the Settlement Amount before a certain date, because otherwise this implementation process cannot begin. The first step that claimants seeking a compensation under the Settlement Agreement need to take in this implementation process, is the timely submission by the claimant of a Claim Form to the Claims Administrator.
90. The obligation for claimants to submit a Claim Form to Computershare and the deadline for filing such Claim Form are stipulated in Article 4.3.7 of the Settlement Agreement as follows:  
*“4.3.7. If an Eligible Shareholder does not submit a Claim Form within 366 days from the Binding Declaration Notice Date (the “Claim Submission Deadline”), that Eligible Shareholder shall not be entitled to any portion of the Settlement Amount as meant in Article 7:907(6) DCC.”*
91. The Dispute Committee notes that since the Binding Declaration Notice Date was dated 27 July 2018, the deadline to submit a Claim Form expired on 28 July 2019. More specifically, the Binding Declaration Notice states that:  
*“The claim form may be filed as from 27 July 2018 and must be received by the Claims Administrator no later than on 28 July 2019 or bear the postmark of that date. Eligible shareholders failing to timely submit a claim form in the prescribed manner are not or no longer entitled to compensation”.*
92. The failure to submit a valid Claim Form, i.e., a Claim Form that fulfils the formal requirements set by Article 4.3.3 of the Settlement Agreement within the Claim Submission Deadline, stands thus in the way of a compensation of the Eligible Shareholder. Claims Forms submitted after 28 July 2019 are deemed late and are therefore inadmissible.



93. In several previous Binding Advices, the Dispute Committee has held that in accordance with the provisions of the Settlement Agreement, it is bound to enforce the Claim Submission Deadline strictly.<sup>29</sup> The Dispute Committee decided in two instances that it could not accept as introduced within the Claim Submission Deadline a Claim Form posted on Monday 29 July 2019 even if the Claim Submission Deadline of 28 July 2019 expired on a Sunday.<sup>30</sup> In several cases where the claimant had timely filed a Claim Form but had erroneously omitted to indicate a certain number of shares in the Claim Form and had not submitted any evidence in relation to these omitted shares within the Claim Submission Deadline, the Dispute Committee decided that the claimant was not allowed to correct or complement essential elements of his Claim Form after the expiry of the Claims Submission Deadline as this would in fact amount to extending the Claim Submission Deadline, which the Dispute Committee has no authority to do.<sup>31</sup>
94. In the present case, it is undisputed between the Parties that no Claim Form and no evidence (e.g. in the form of bank certificates) were submitted to Computershare for the 292.366 Fortis shares by or on behalf of Mr [REDACTED] or his only son Mr [REDACTED] within the Claim Submission Deadline of 28 July 2019. The first time that these shares were mentioned by the Claimant's representative as a basis for compensation and that any evidence of these shares was submitted to Computershare was on 7 May 2020, more than 8 months after the expiry of the Claim Submission Deadline. In accordance with the consistent case law of the Dispute Committee,<sup>32</sup> the Claimant is not allowed to complement the number of shares claimed, which is an essential element of the Claim Form, after 28 July 2019. This means that Claimant's claim for compensation for the 292.366 shares inherited from his deceased father, which was submitted on 7 May 2020, was late and must therefore in principle be dismissed.
95. The Claimant takes however the position that notwithstanding the expiry of the Claim Submission Deadline, he should have been allowed to complement his own claim with the 292.366 Fortis shares he inherited from his father, after he became aware of the situation in 2020. In support of his position, the Claimant invokes (i) force majeure, (ii) access to justice and (iii) reasonableness and fairness. The Dispute Committee will address these arguments in turn below.

## B.2 Force majeure

96. The Claimant invokes force majeure as it was not reasonably possible for either his father Mr [REDACTED] or himself to submit a Claim Form during the claims filing period comprised between 27 July 2018 and 28 July 2019. With respect to his father, this was – in short – because he was very old and had been mentally impaired for almost a year before he passed away on [REDACTED] 2019. As a result, Mr [REDACTED] had not been able to file a Claim Form in the period comprised between 27 July 2018 and his demise on [REDACTED] 2019. As the Claimant was

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<sup>29</sup> See in this respect Binding Advices n° 2020/0094, 2021/0006, 2021/0024, 2021/0028, 2021/0034, 2021/0038, 2021/0039, 2021/0040, 2021/0041, 2021/0043, 2021/0057, 2021/0106, 2021/0107, 2021/0127.

<sup>30</sup> See Binding Advices n° 2021/0043 and 2021/0057.

<sup>31</sup> See Binding Advices n° 2021/0039, 2021/0067, 2021/0107 and 2021/0127.

<sup>32</sup> See footnote 29.

not aware of this situation Mr [REDACTED] was not declared legally incapacitated before his death and was still responsible of the administration of his assets. With respect to himself, this was – in short – because after his father’s death, he was facing huge emotional and practical burdens and did not have a reasonable chance to find out in due time that his father had not submitted a claim for his Fortis shares.

97. As legal basis, the Claimant relies primarily on Article 6:75 DCC. In an unofficial English translation, this provision reads as follows: *“A non-performance cannot be attributed to the debtor if he is not to blame for it nor accountable for it by virtue of law, a juridical act or generally accepted principles (common opinion)”*.<sup>33</sup>
98. In practice, force majeure almost always implies an – absolute or relative – impossibility to perform.<sup>34</sup> It is for the Claimant to state and establish a case of force majeure.<sup>35</sup> Whether force majeure exists or not will depend on the circumstances of the case.
99. In the present case, the Dispute Committee considers that the Claimant has not been able to show that the failure to submit a Claim Form for the 292.366 shares inherited from his father cannot be attributed to him, either because he is not to blame for it or because he is not accountable for it by virtue of generally accepted principles.
100. Even if the death of a parent is a tragic event, the Claimant had more than [REDACTED] months after the death of his father to submit a Claim Form before the expiry of the Claim Submission Deadline. Since the Claimant also submitted a Claim Form for his own shareholdings, he must be deemed to have been aware of the Settlement Agreement and the Claim Submission Deadline. In any event, he could have sought assistance to help him in this regard. The Claimant could have also sought information directly from Computershare to confirm whether a Claim Form had been filed or not by or on behalf of his father. Furthermore, by 24 May 2019, it was clear that the Claimant together with his father’s widow Ms [REDACTED]<sup>36</sup> were the only heirs of Mr [REDACTED]. At that time, the Claimant must be deemed to have received access to his father’s estate and affairs. The two bank certificates from BNP Paribas, which the Claimant submitted to Computershare on 7 May 2020, date from 2010 and 2015 and were presumably found by the Claimant in his father’s papers. As the Claimant did not attend the hearing on the merits, the Dispute Committee has not been able to establish the exact facts surrounding the Claimant’s alleged late discovery of his father’s shares. On the basis of the evidence before it, the Dispute Committee finds that the Claimant has not convincingly established that he was in a situation of force majeure, and considers that the Claimant could (still) have filed a Claim Form for his father’s shares within the Claim Submission Deadline.

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<sup>33</sup> The original Dutch text of Article 6 :75 DCC reads: *“Een tekortkoming kan de schuldenaar niet worden toegerekend, indien zij niet te wijten is aan zijn schuld, noch krachtens wet, rechtshandeling of in het verkeer geldende opvattingen voor zijn rekening komt”*.

<sup>34</sup> Asser/Sieburgh 6-I 2020/332.

<sup>35</sup> Asser/Sieburgh 6-I 2020/370.

<sup>36</sup> The son having bare-ownership while the widow received the usufruct of the estate.

101. Besides, the Claimant cannot invoke as force majeure circumstances related to the situation of his father. It may very well be that due to his declining health, Mr ██████████ was not able to file a Claim Form before his demise. However, in view of the finding above, the Dispute Committee fails to see how this circumstance can provide a force majeure for Mr ██████████ ██████████. Therefore, the reference by the Claimant to Binding Advice n° 2021/0074, where the Dispute Committee considered whether the medical situation of the Claimant would constitute a case of force majeure or not, is not relevant.
102. The other references to legal sources in Dutch and EU law,<sup>37</sup> which have incorporated the notion of force majeure, do not help the Claimant either. The Claimant explains that these sources confirm that force majeure is a general and accepted principle but does not substantiate why and how these particular sources are relevant to the case at hand. The Dutch Civil Procedure regulations ("*Landelijk procesreglement civiele zaken rechtbanken en gerechtshoven*") are clearly not applicable to the procedure before the Dispute Committee, as the Claimant acknowledges himself. The same applies to the EU Regulation establishing a European Small Claims Procedure and the cited decision from the European Court of Justice, which deals with export refunds in the agricultural sector.
103. While it is correct as the Claimant pointed out, that the Dispute Committee has analysed in a few cases whether there was a case of force majeure, thereby implicitly acknowledging the possibility of force majeure, the Dispute Committee never accepted a claim submitted after the Claim Submission Deadline on the basis of this principle.<sup>38</sup>
104. In line with its case law,<sup>39</sup> the Dispute Committee therefore considers that the Claimant was not in a situation of force majeure preventing him from filing a Claim Form for the shares held by his late father. Hence, the Claimant cannot avoid the sanction attached to the expiry of the Claim Submission Deadline of Article 4.3.7 of the Settlement Agreement.

### B.3 Access to justice

105. According to the Claimant, both the Constitution of the Netherlands and Article 6 ECHR guarantee effective access to justice and must be taken into account in this binding advice procedure, which has consequences similar to a judicial decision. More specifically, expiry periods such as the Claim Submission Deadline, are a potential barrier to access to justice.
106. The Dispute Committee notes that the Claimant rightly acknowledges that the binding advice procedure itself is a means of access to justice. By submitting a Request for Binding Advice to the Dispute Committee, the Claimant is in fact exercising his right of access to justice.
107. The rationale of the Claim Submission Deadline has already been set out in paragraph 93 above. This deadline of one year, which is long, constitutes a valid limitation of the claimants'

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<sup>37</sup> See paragraph 72.

<sup>38</sup> See Binding Advices n° 2021/0039 and n° 2021/0074.

<sup>39</sup> See Binding Advice n° 2021/0039.

right to seek compensation under the Settlement Agreement. Without this deadline, the implementation of the Settlement Agreement can never reach finality.

108. In conclusion, the Dispute Committee does not see how the Claimant's right of access to justice has been impaired in the present proceedings.

#### B.4 Reasonableness and fairness

109. Furthermore, the Claimant invokes the principle of reasonableness and fairness under Dutch law and states that pursuant to Article 6:248 (2) DCC a rule applicable between the parties as a result of a settlement agreement shall not apply insofar as this would be unacceptable according to standards of reasonableness and fairness in the given circumstances.
110. It is correct that the principle of reasonableness and fairness forms part of Dutch law.<sup>40</sup> Agreements (in general), such as settlement agreements (in particular), may be supplemented or limited in scope and content, by the operation of reasonableness and fairness. In the application of the principle of reasonableness and fairness, there is indeed a distinction between the supplementing effect and the restrictive effect.<sup>41</sup>
111. The restrictive effect of this principle is applied with restraint.<sup>42</sup> In line with established case law of the Dutch Supreme Court, it is the opinion of the Dispute Committee that a provision of a settlement agreement between parties, can only be set aside due to a violation of the principle of reasonableness and fairness, in very exceptional situations, namely if the application of the provision would lead to an outcome that would in the given circumstances be unacceptable according to the standards of reasonableness and fairness.
112. Despite the absence of (higher) case law regarding settlement agreements that have been declared generally binding by the Amsterdam Court of Appeal under Section 7:907 DCC, the Dispute Committee can only assume that any judicial review of an individual application of a settlement agreement that the Court of Appeal of Amsterdam has approved, such as the Settlement Agreement, is even more restrictive than in application of Article 6:248 in case of ordinary agreements or of Article 7:904 DCC in case of settlement agreements.<sup>43</sup>

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<sup>40</sup> As laid down in Article 6:248 DCC. Article 6:248 DCC reads: "1. An agreement not only has the legal effects which parties have agreed upon, but also those which, to the nature of the agreement, arise from law, usage (common practice) or the standards of reasonableness and fairness. - 2. A rule, to be observed by parties as a result of their agreement, is not applicable insofar this, given the circumstances, would be unacceptable to standards of reasonableness and fairness" (free translation from Dutch).

<sup>41</sup> Asser/Sieburgh 6-III 2018/391, 410 and following.

<sup>42</sup> Dutch Supreme Court 10 July 2009, ECLI:NL:HR:2009:BI3820; the Court applies the restrictive effect of reasonableness and fairness only with the utmost restraint (Supreme Court 9 January 1998, ECLI:NL:HR:1998:ZC2540 (*Gemeente Apeldoorn/Duisterhof*)). It is not sufficient that an outcome is 'not fair' (Supreme Court 25 February 2000, ECLI:NL:HR:2000:AA4942 (*FNV/Maas*)) or 'not within the reasonable' (Supreme Court 14 December 2001, ECLI:NL:HR:2001:AD4504 (*Bouwkamp/Van Dijke*)). See Parliamentary History to article 6:248 DCC, Kluwer 1981, p. 919-925 and Sdu 2021. More recently, see Supreme Court 29 January 2021, ECLI:NL:HR:2021:153.

<sup>43</sup> Article 7:904 DCC par 1 holds: "An assessment made by one of the parties or a third party is voidable if its binding force, in view of its content or the way in which it was made, would in the given circumstances be unacceptable according to standards of reasonableness and fairness" (free translation from Dutch).

113. In the context of the present Settlement Agreement, a deviation from the rules of the Settlement Agreement and the Regulations could only come into play if it would be unacceptable under the circumstances in view of the standards of reasonableness and fairness that the Claimant be bound by Computershare's decision.
114. The Claimant does not elaborate why the enforcement of the Claim Submission Deadline of Article 4.3.7 would be unacceptable according to standards of reasonableness and fairness. The very nature of a time limit implies that a claim that is substantially valid is no longer accepted if the required formality (such as the submission of a Claim Form) is not performed within that particular time limit. The mere finding that a claim would have been found in good order in absence of the time limit does not make such time limit or its sanction contrary to the standards of reasonableness and fairness.<sup>44</sup> Only in exceptional circumstances, that are not present in the instant case for the factual reasons discussed above under B.2,<sup>45</sup> would these standards justify to deviate from the sanction of a prescribed time limit.

*B.5 Has the Determination of Provisional Claim Amount of 24 May 2019 become final?*

115. The Claimant also makes an argument of the fact that the Determination of the Provisional Claim Amount by Computershare on 24 May 2019 did not become final as the Claimant submitted a Notice of Disagreement on 13 June 2019 and Computershare never issued a Notice of Rejection within the meaning of Article 4.6 of the Regulations. Since *"it was materially impossible for a bulk filer to verify all the hundreds of provisional claim amounts for additional motives"*,<sup>46</sup> the Claimant's counsel and representative at the time (i.e. in June 2019) reserved his rights to invoke additional motives in support of his Notice of Disagreement. For these two reasons, according to the Claimant, the Determination of the Provisional Claim Amount of 24 May 2019 was not final. As a result, the Claimant argues that he should have been allowed to complement his Claim Form in May 2020 with the 292.366 Fortis shares inherited from his father deceased on [REDACTED] 2019.
116. The Dispute Committee finds that the question of whether the bulk Notice of Disagreement filed by the Claimant's representative in June 2019 could have been complemented at a later stage is irrelevant in the instant case. The issue that is here at stake is whether the sanction of the Claim Submission Deadline prescribed by Article 4.3.7 of the Settlement Agreement applies with respect to the 292.366 shares previously held by the Claimant's father. For the reasons discussed above, the Dispute Committee has upheld such sanction with respect to those shares, for which a compensation has neither be claimed nor be supported by any documentation submitted to the Claims Administrator before the Claim Submission Deadline.

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<sup>44</sup> For a similar finding, see Binding Advices n° 2021/0037, p. 9, para. 48 and 2021/0057, p. 8, para. 37.

<sup>45</sup> According to the Claimant, *"with regard to the specific aim of the Settlement Agreement, it would be unfair and unreasonable to exclude 'force majeure' when a prejudiced person was very old, psychologically impaired, and ultimately died during the expiry period"* (Claimant's submission of 21 February 2023, p. 5, para 13). The factual reasons invoked by the Claimant to support his argument that the rejection of his Claim would be unacceptable according to standards of reasonableness and fairness are the same factual reasons as those invoked to support his argument of "force majeure".

<sup>46</sup> Claimant's submission of 30 January 2023, p.5, iv).

117. The issue of the finality of a Determination (of Acceptance or Rejection) by the Claim Administrator can only pertain to a compensation that had been claimed by the Eligible Shareholder prior to this Determination. In the present case, the Determination of the Provisional Amount of 24 May 2019 does not refer to the shares that are the subject of this dispute for the simple reason that no compensation had been claimed at that time for those shares.
118. The Settlement Agreement and the Regulations grant to each Eligible Shareholder the faculty to disagree with the Determination(s) received from the Claims Administrator within a particular time limit (Article 4.3 of the Regulations for the Determination of the Provisional Claim Amount and Article 4.9/2 of the Regulations for the Determination of the Final Amount). These procedural windows left open by the Regulations for challenging the Determinations made by the Claims Administrator cannot be interpreted or used as a derogation to the Claim Submission Deadline i.e. the unique and not extendable time limit for submitting a claim of 28 July 2019. Through the Notice of Disagreement referred to in Articles 4.3 and 4.9/3 of the Regulations the Eligible Shareholder can only challenge the Determination made by the Claims Administrator for a compensation already claimed. It does not give the Eligible Shareholder an opportunity to submit a new claim.
119. In view of the strict application of the Claim Submission Deadline described in paragraphs 90-93 above, the only way for the Claimant to seek and obtain compensation for the 292.366 Fortis shares inherited from his father would have been to submit a new or additional Claim Form and the evidence of the shares before 28 July 2019, which he did not do.

*B.6 The Claimant's request for disclosure*

120. Finally, the Claimant has requested Computershare to disclose any provisions of its contract with Ageas and/or FORsettlement which could entail a liability with the regard to the claims administration services provided. Computershare has not complied with this request. The Claimant suggests that the Claims Administrator might be held liable for implementing the terms of the Settlement Agreement in contradictory ways and according to variable standards depending on the Eligible Shareholder and on the circumstances.<sup>47</sup>
121. According to Article 4.3.5 of the Settlement Agreement, the Dispute Committee is competent to review the determination of the claim made by the Claims Administrator. The determination of a claim by the Claims Administrator consists in assessing "*the validity of each claim made on a Claim Form and the amount allocated to each Shareholder who complies with the requirements of this agreement*" (Article 4.3.4 of the Settlement Agreement).
122. The Dispute Committee is therefore only competent to review the determination of a particular claim by the Claims Administrator on the basis of the facts and circumstances pertaining to that particular claim.

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<sup>47</sup> See Claimant's submission of 30 January 2023, pp. 2-3, ii).

123. The Dispute Committee is not competent for supervising, monitoring and administering the distribution of the Settlement Amount. Such task has been entrusted to FORsettlement.<sup>48</sup> Also, the Dispute Committee is not competent to adjudicate potential liability claims against the Claims Administrator.
124. For that reason, the request of the Claimant to order Computershare to disclose any provisions of its contract with Ageas and/or FORsettlement shall be rejected.

C. Conclusion

125. The Claimant's Request for Binding Advice must therefore be rejected by application of Article 4.3.7 of the Settlement Agreement, on the ground that the Claimant did not file a Claim Form for the 292.366 Fortis shares within the time limit stipulated in this provision.

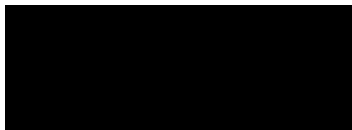
**VI. DECISION**

126. The Dispute Committee, on the basis of the above findings and considerations:
- Rejects the Claims of the Claimant as contained in his Request for Binding Advice of 11 October 2022 pursuant to Article 4.3.7 of the Settlement Agreement;
  - Decides that the present Binding Advice shall be published in an anonymized form (with respect to the Claimant and the Eligible Shareholders) on www. FORsettlement.com.

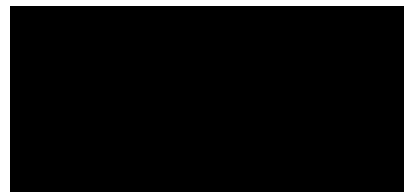
This Binding Advice is issued in four original, identical versions, one for each of the Parties, one for FORsettlement, and one for the Dispute Committee.

Done on 26 June 2023

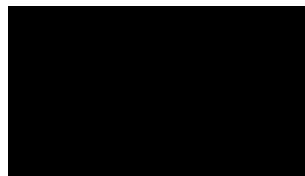
The Dispute Committee:



Harman KORTE



Dirk SMETS



Alexandra SCHLUEP

<sup>48</sup> Article 4.2.1 of the Settlement Agreement.